IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/597/2008

[Arising out of Order-in-Appeal No: 71 (Gr IIB)/2008 (JNCH) dated 28th February 2008 of Commissioner of Customs (Appeals), Mumbai-II.]

Prem Lamorai … ***Appellant***

versus

Commissioner of Customs
Nhava Sheva …***Respondent***

Appearance:

Shri Shamita J Patel with Shri J C Patel, Advocates for appellant

Shri Ahibaran, Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 15/01/2018
Date of decision: 15/01/2018

ORDER NO: A/86303 / 2018

Per: C J Mathew

The issue for determination in this appeal of M/s Prem Lamorai, against order-in-appeal no. 71 (Gr IIB)/2008 (JNCH) dated 28th February 2008 of Commissioner of Customs (Appeals), Mumbai-

II, is the relevant date for levy of anti-dumping duty imposed after filing of the bill of entry but before clearance of the goods. The lower authorities have held that all duties that subsist on the date of payment are required to be discharged.

2. Appellant had imported 'tyres, tubes and flaps' invoiced at US$ 82080 and filed bill of entry no. 841627/20.7.2007 which was assessed on 26th September 2007; duty liability was discharged on 28th September 2007. Anti-dumping duty, imposed vide notification no. 88/2007-Cus dated 24th of July 2007 was also charged.

3. According to Learned Counsel for appellant, the duty liability subsisting on the date of filing of bill of entry is all that can be collected. It is further contended that the provisional anti-dumping duty imposed by notification no. 106/06-Cus dated 9th October 2006 had lapsed by the time that the bill of entry had been filed. Learned Counsel also places reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Customs, Bangalore v. GM Exports [2015 (324) ELT 209 (SC)]*.

4. Learned Authorized Representative submitted that the first appellate authority was correct in interpreting that the embargo on recovery of differential duty under rule 21(1) of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 was

limited to such imports on which provisional anti-dumping duty had already been collected and that would not find application here.

5. There is no doubt that, as on the date of filing of entry, the provisional anti-dumping duty was no longer in force. The final antidumping duty came into force only a few days after the presentation of bill of entry. Under section 15 of Customs Act, 1962, the relevant date for determining duty liability is the date of filing of bill of entry. It is, thus, borne out by the facts that the proper officer was not empowered to levy anti-dumping duty on the impugned goods.

6. Consequently, we set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in Court)

(Anil Choudhary)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as0905*